

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 305

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO BEHAVIORAL HEALTH; ALLOWING JUVENILE TREATMENT IN
CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 32A-2-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a
child that would be designated as a crime under the law if
committed by an adult, not including a violation of Section
30-9-2 NMSA 1978, including the following offenses:

(1) any of the following offenses pursuant to
municipal traffic codes or the Motor Vehicle Code:

(a) driving while under the influence of
intoxicating liquor or drugs;

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1 (b) failure to stop in the event of an
2 accident causing death, personal injury or damage to property;

3 (c) unlawful taking of a vehicle or
4 motor vehicle;

5 (d) receiving or transferring of a
6 stolen vehicle or motor vehicle;

7 (e) homicide by vehicle;

8 (f) injuring or tampering with a
9 vehicle;

10 (g) altering or changing of an engine
11 number or other vehicle identification numbers;

12 (h) altering or forging of a driver's
13 license or permit or any making of a fictitious license or
14 permit;

15 (i) reckless driving;

16 (j) driving with a suspended or revoked
17 license; or

18 (k) an offense punishable as a felony;

19 (2) buying, attempting to buy, receiving,
20 possessing or being served any alcoholic liquor or being
21 present in a licensed liquor establishment, other than a
22 restaurant or a licensed retail liquor establishment, except in
23 the presence of the child's parent, guardian, custodian or
24 adult spouse. As used in this paragraph, "restaurant" means an
25 establishment where meals are prepared and served primarily for

1 on-premises consumption and that has a dining room, a kitchen
2 and the employees necessary for preparing, cooking and serving
3 meals. "Restaurant" does not include an establishment, as
4 defined in regulations promulgated by the director of the
5 special investigations unit of the department of public safety,
6 that serves only hamburgers, sandwiches, salads and other fast
7 foods;

8 (3) a violation of Section 30-29-2 NMSA 1978,
9 regarding the illegal use of a glue, aerosol spray product or
10 other chemical substance;

11 (4) a violation of the Controlled Substances
12 Act;

13 (5) escape from the custody of a law
14 enforcement officer or a juvenile probation or parole officer
15 or from any placement made by the department by a child who has
16 been adjudicated a delinquent child;

17 (6) a violation of Section 30-15-1.1 NMSA 1978
18 regarding unauthorized graffiti on personal or real property;
19 or

20 (7) a violation of an order of protection
21 issued pursuant to the provisions of the Family Violence
22 Protection Act;

23 B. "delinquent child" means a child who has
24 committed a delinquent act;

25 C. "delinquent offender" means a delinquent child

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1 who is subject to juvenile sanctions only and who is not a
2 youthful offender or a serious youthful offender;

3 D. "detention facility" means a place where a child
4 may be detained under the Children's Code pending court hearing
5 and does not include a facility for the care and rehabilitation
6 of an adjudicated delinquent child;

7 E. "felony" means an act that would be a felony if
8 committed by an adult;

9 F. "likelihood of serious harm to self or others"
10 means that it is more likely than not that in the near future
11 the child will inflict serious bodily harm on the child's self
12 or another person or commit a criminal sexual offense, as
13 evidenced by behavior causing, attempting or threatening such
14 harm, which behavior gives rise to a reasonable fear of such
15 harm;

16 [~~F.~~] G. "misdemeanor" means an act that would be a
17 misdemeanor or petty misdemeanor if committed by an adult;

18 [~~G.~~] H. "restitution" means financial reimbursement
19 by the child to the victim or community service imposed by the
20 court and is limited to easily ascertainable damages for injury
21 to or loss of property, actual expenses incurred for medical,
22 psychiatric and psychological treatment for injury to a person
23 and lost wages resulting from physical injury, which are a
24 direct and proximate result of a delinquent act. "Restitution"
25 does not include reimbursement for damages for mental anguish,

1 pain and suffering or other intangible losses. As used in this
2 subsection, "victim" means a person who is injured or suffers
3 damage of any kind by an act that is the subject of a complaint
4 or referral to law enforcement officers or juvenile probation
5 authorities. Nothing contained in this definition limits or
6 replaces the provisions of Subsections A and B of Section
7 32A-2-27 NMSA 1978;

8 ~~[H.]~~ I. "serious youthful offender" means an
9 individual fifteen to eighteen years of age who is charged with
10 and indicted or bound over for trial for first degree murder.
11 A "serious youthful offender" is not a delinquent child as
12 defined pursuant to the provisions of this section;

13 ~~[I.]~~ J. "supervised release" means the release of a
14 juvenile, whose term of commitment has not expired, from a
15 facility for the care and rehabilitation of adjudicated
16 delinquent children, with specified conditions to protect
17 public safety and promote successful transition and
18 reintegration into the community. A juvenile on supervised
19 release is subject to monitoring by the department until the
20 term of commitment has expired and may be returned to custody
21 for violating conditions of release; and

22 ~~[J.]~~ K. "youthful offender" means a delinquent
23 child subject to adult or juvenile sanctions who is:

24 (1) fourteen to eighteen years of age at the
25 time of the offense and who is adjudicated for at least one of

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1 the following offenses:

2 (a) second degree murder, as provided in
3 Section 30-2-1 NMSA 1978;

4 (b) assault with intent to commit a
5 violent felony, as provided in Section 30-3-3 NMSA 1978;

6 (c) kidnapping, as provided in Section
7 30-4-1 NMSA 1978;

8 (d) aggravated battery, as provided in
9 Subsection C of Section 30-3-5 NMSA 1978;

10 (e) aggravated battery against a
11 household member, as provided in Subsection C of Section
12 30-3-16 NMSA 1978;

13 (f) aggravated battery upon a peace
14 officer, as provided in Subsection C of Section 30-22-25 NMSA
15 1978;

16 (g) shooting at a dwelling or occupied
17 building or shooting at or from a motor vehicle, as provided in
18 Section 30-3-8 NMSA 1978;

19 (h) dangerous use of explosives, as
20 provided in Section 30-7-5 NMSA 1978;

21 (i) criminal sexual penetration, as
22 provided in Section 30-9-11 NMSA 1978;

23 (j) robbery, as provided in Section
24 30-16-2 NMSA 1978;

25 (k) aggravated burglary, as provided in

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1 Section 30-16-4 NMSA 1978;

2 (1) aggravated arson, as provided in
3 Section 30-17-6 NMSA 1978; or

4 (m) abuse of a child that results in
5 great bodily harm or death to the child, as provided in Section
6 30-6-1 NMSA 1978;

7 (2) fourteen to eighteen years of age at the
8 time of the offense, who is adjudicated for any felony offense
9 and who has had three prior, separate felony adjudications
10 within a three-year time period immediately preceding the
11 instant offense. The felony adjudications relied upon as prior
12 adjudications shall not have arisen out of the same transaction
13 or occurrence or series of events related in time and location.
14 Successful completion of consent decrees is not considered a
15 prior adjudication for the purposes of this paragraph; or

16 (3) fourteen years of age and who is
17 adjudicated for first degree murder, as provided in Section
18 30-2-1 NMSA 1978."

19 **SECTION 2.** Section 32A-2-21 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 50, as amended) is amended to read:

21 "32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL DISORDER
22 OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING.--

23 A. If in a hearing at any stage of a proceeding on
24 a delinquency petition the evidence indicates that the child
25 has or may have a mental disorder or developmental disability,

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1 the court may:

2 (1) order the child detained if appropriate
3 under the criteria established pursuant to the provisions of
4 the Delinquency Act; and

5 (2) initiate proceedings for the involuntary
6 placement of the child as a minor with a mental disorder or
7 developmental disability pursuant to the provisions of the
8 Children's Mental Health and Developmental Disabilities Act.

9 B. If the child is placed for residential treatment
10 or habilitation pursuant to the Children's Mental Health and
11 Developmental Disabilities Act, the department shall retain
12 legal custody during the period of involuntary placement or
13 until further order of the court.

14 C. If a child is committed to a psychiatric
15 hospital for treatment or habilitation and in the event that
16 the department should be required to pay more than four hundred
17 dollars (\$400) per day because of the individualized treatment
18 plan, the annual costs over four hundred dollars (\$400) per
19 child per day will be reported annually by the department to
20 the legislative finance committee.

21 D. The child may remain in the residential
22 treatment or habilitation facility pending the disposition of
23 the delinquency petition.

24 E. The child shall remain in the residential
25 treatment or habilitation facility if:

1 (1) the child has been charged with a felony
2 offense; and

3 (2) there is evidence that the child poses a
4 likelihood of serious harm to the child's self or others.

5 F. A child placed in a residential treatment or
6 habilitation facility pursuant to Subsection E of this section
7 shall remain in that placement until the child reaches the age
8 of majority or until the child has completed a trial in a
9 criminal case as a competent defendant.

10 ~~[E.]~~ G. When a child in departmental custody needs
11 involuntary placement for residential mental health or
12 developmental disability services as a result of a mental
13 disorder or developmental disability, the department shall
14 request the children's court attorney to petition for that
15 child's placement pursuant to the provisions of the Children's
16 Mental Health and Developmental Disabilities Act.

17 ~~[F.]~~ H. A child subject to the provisions of the
18 Delinquency Act who receives treatment in a residential
19 treatment or habilitation program shall enjoy all the
20 substantive and procedural rights set forth in the Children's
21 Mental Health and Developmental Disabilities Act.

22 ~~[G.]~~ I. A child's competency to stand trial or
23 participate in ~~[his]~~ the child's own defense may be raised by a
24 party at any time during a proceeding. If the child has been
25 accused of an act that would be considered a misdemeanor if the

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1 child were an adult and the child is found to be incompetent to
2 stand trial, the court shall dismiss the petition with
3 prejudice and may recommend that the children's court attorney
4 initiate proceedings pursuant to the provisions of the
5 Children's Mental Health and Developmental Disabilities Act.

6 In all other cases, the court shall stay the proceedings until
7 the child is competent to stand trial; provided that a petition
8 shall not be stayed for more than one year unless the child is
9 being treated pursuant to Subsection E of this section. The

10 court may order treatment to enable the child to attain
11 competency to stand trial and may amend the conditions of
12 release pursuant to Sections 32A-2-11 and 32A-2-13 NMSA 1978.
13 The child's competency to stand trial shall be reviewed every
14 ninety days for up to one year and every six months for a child
15 being treated pursuant to Subsection E of this section. Except

16 as provided in Subsection E of this section, the court shall
17 dismiss the petition without prejudice if, at any time during
18 the year, the court finds that a child cannot be treated to
19 competency or if, after one year, the court determines that a
20 child is incompetent to stand trial or participate in ~~[his]~~ the
21 child's own defense. Upon dismissal, the court may recommend
22 that the children's court attorney initiate proceedings
23 pursuant to the provisions of the Children's Mental Health and
24 Developmental Disabilities Act.

25 ~~[H.]~~ J. Involuntary residential treatment shall

1 only occur pursuant to the provisions of the Children's Mental
2 Health and Developmental Disabilities Act."

3 SECTION 3. Section 32A-6A-4 NMSA 1978 (being Laws 2007,
4 Chapter 162, Section 4, as amended) is amended to read:

5 "32A-6A-4. DEFINITIONS.--As used in the Children's Mental
6 Health and Developmental Disabilities Act:

7 A. "aversive intervention" means any device or
8 intervention, consequences or procedure intended to cause pain
9 or unpleasant sensations, including interventions causing
10 physical pain, tissue damage, physical illness or injury;
11 electric shock; isolation; forced exercise; withholding of
12 food, water or sleep; humiliation; water mist; noxious taste,
13 smell or skin agents; and over-correction;

14 B. "behavioral health services" means a
15 comprehensive array of professional and ancillary services for
16 the treatment, habilitation, prevention and identification of
17 mental illnesses, behavioral symptoms associated with
18 developmental disabilities, substance abuse disorders and
19 trauma spectrum disorders;

20 C. "capacity" means a child's ability to:

21 (1) understand and appreciate the nature and
22 consequences of proposed health care, including its significant
23 benefits, risks and alternatives to proposed health care; and

24 (2) make and communicate an informed health
25 care decision;

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1 D. "chemical restraint" means a medication that is
2 not standard treatment for the patient's medical or psychiatric
3 condition that is used to control behavior or to restrict a
4 patient's freedom of movement;

5 E. "child" means a person who is a minor;

6 F. "clinician" means a person whose licensure
7 allows the person to make independent clinical decisions,
8 including a physician, licensed psychologist, psychiatric nurse
9 practitioner, licensed independent social worker, licensed
10 marriage and family therapist and licensed professional
11 clinical counselor;

12 G. "continuum of services" means a comprehensive
13 array of emergency, outpatient, intermediate and inpatient
14 services and care, including screening, early identification,
15 diagnostic evaluation, medical, psychiatric, psychological and
16 social service care, habilitation, education, training,
17 vocational rehabilitation and career counseling;

18 H. "developmental disability" means a severe
19 chronic disability that:

20 (1) is attributable to a mental or physical
21 impairment or a combination of mental or physical impairments;

22 (2) is manifested before a person reaches
23 twenty-two years of age;

24 (3) is expected to continue indefinitely;

25 (4) results in substantial functional

1 limitations in three or more of the following areas of major
2 life activities:

- 3 (a) self-care;
- 4 (b) receptive and expressive language;
- 5 (c) learning;
- 6 (d) mobility;
- 7 (e) self-direction;
- 8 (f) capacity for independent living; or
- 9 (g) economic self-sufficiency; and

10 (5) reflects a person's need for a combination
11 and sequence of special, interdisciplinary or other supports
12 and services that are of lifelong or extended duration that are
13 individually planned or coordinated;

14 I. "evaluation facility" means a community mental
15 health or developmental disability program, a medical facility
16 having psychiatric or developmental disability services
17 available or, if none of the foregoing is reasonably available
18 or appropriate, the office of a licensed physician or a
19 licensed psychologist, any of which shall be capable of
20 performing a mental status examination adequate to determine
21 the need for appropriate treatment, including possible
22 involuntary treatment;

23 J. "family" means persons with a kinship
24 relationship to a child, including the relationship that exists
25 between a child and a biological or adoptive parent, relative

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1 of the child, a step-parent, a godparent, a member of the
2 child's tribe or clan or an adult with whom the child has a
3 significant bond;

4 K. "habilitation" means services, including
5 behavioral health services based on evaluation of the child,
6 that are aimed at assisting the child to prevent, correct or
7 ameliorate a developmental disability. The purpose of
8 habilitation is to enable the child to attain, maintain or
9 regain maximum functioning or independence or to assist the
10 child pursuant to Subsection E of Section 32A-2-21 NMSA 1978.

11 "Habilitation" includes programs of formal, structured
12 education and treatment and rehabilitation services;

13 L. "individual instruction" means a child's
14 direction concerning a mental health treatment decision for the
15 child, made while the child has capacity and is fourteen years
16 of age or older, which is to be implemented when the child has
17 been determined to lack capacity;

18 M. "least restrictive means principle" means the
19 conditions of habilitation or treatment for the child,
20 separately and in combination that:

21 (1) are no more harsh, hazardous or intrusive
22 than necessary to achieve acceptable treatment objectives for
23 the child;

24 (2) involve no restrictions on physical
25 movement and no requirement for residential care, except as

1 reasonably necessary for the administration of treatment or for
2 the protection of the child or others from physical injury; and

3 (3) are conducted at the suitable available
4 facility closest to the child's place of residence;

5 N. "legal custodian" means a biological or adoptive
6 parent of a child unless legal custody has been vested in a
7 person, department or agency and also includes a person
8 appointed by an unexpired power of attorney;

9 O. "licensed psychologist" means a person who holds
10 a current license as a psychologist issued by the New Mexico
11 state board of psychologist examiners;

12 P. "likelihood of serious harm to self" means that
13 it is more likely than not that in the near future a child will
14 attempt to commit suicide or will cause serious bodily harm to
15 the child by violent or other self-destructive means, as
16 evidenced by behavior causing, attempting or threatening such
17 harm, which behavior gives rise to a reasonable fear of such
18 harm from the child;

19 Q. "likelihood of serious harm to others" means
20 that it is more likely than not that in the near future the
21 child will inflict serious bodily harm on another person or
22 commit a criminal sexual offense, as evidenced by behavior
23 causing, attempting or threatening such harm, which behavior
24 gives rise to a reasonable fear of such harm from the child;

25 R. "mechanical restraint" means any device or

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1 material attached or adjacent to the child's body that
2 restricts freedom of movement or normal access to any portion
3 of the child's body and that the child cannot easily remove but
4 does not include mechanical supports or protective devices;

5 S. "mechanical support" means a device used to
6 achieve proper body position, designed by a physical therapist
7 and approved by a physician or designed by an occupational
8 therapist, such as braces, standers or gait belts, but not
9 including protective devices;

10 T. "medically necessary services" means clinical
11 and rehabilitative physical, mental or behavioral health
12 services that are:

13 (1) essential to prevent, diagnose or treat
14 medical conditions or are essential to enable the child to
15 attain, maintain or regain functional capacity;

16 (2) delivered in the amount, duration, scope
17 and setting that is clinically appropriate to the specific
18 physical, mental and behavioral health care needs of the child;

19 (3) provided within professionally accepted
20 standards of practice and national guidelines; and

21 (4) required to meet the physical, mental and
22 behavioral health needs of the child and are not primarily for
23 the convenience of the child, provider or payer;

24 U. "mental disorder" means a substantial disorder
25 of the child's emotional processes, thought or cognition, not

1 including a developmental disability, that impairs the child's:

2 (1) functional ability to act in
3 developmentally and age-appropriate ways in any life domain;

4 (2) judgment;

5 (3) behavior; and

6 (4) capacity to recognize reality;

7 V. "mental health or developmental disabilities
8 professional" means a person who by training or experience is
9 qualified to work with persons with mental disorders or
10 developmental disabilities;

11 W. "out-of-home treatment or habilitation program"
12 means an out-of-home residential program that provides twenty-
13 four-hour care and supervision to children with the primary
14 purpose of providing treatment or habilitation to children.

15 "Out-of-home treatment or habilitation program" includes [~~but~~
16 ~~is not limited to~~] treatment foster care, group homes,
17 psychiatric hospitals, psychiatric residential treatment
18 facilities and non-medical and community-based residential
19 treatment centers;

20 X. "parent" means a biological or adoptive parent
21 of a child whose parental rights have not been terminated;

22 Y. "physical restraint" means the use of physical
23 force without the use of any device or material that restricts
24 the free movement of all or a portion of a child's body;

25 Z. "protective devices" means helmets, safety

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1 goggles or glasses, guards, mitts, gloves, pads and other
2 common safety devices that are normally used or recommended for
3 use by persons without disabilities while engaged in a sport or
4 occupation or during transportation;

5 AA. "residential treatment or habilitation program"
6 means diagnosis, evaluation, care, treatment or habilitation
7 rendered inside or on the premises of a mental health or
8 developmental disabilities facility, hospital, clinic,
9 institution, supervisory residence or nursing home when the
10 child resides on the premises and where one or more of the
11 following measures is available for use:

12 (1) a mechanical device to restrain or
13 restrict the child's movement;

14 (2) a secure seclusion area from which the
15 child is unable to exit voluntarily;

16 (3) a facility or program designed for the
17 purpose of restricting the child's ability to exit voluntarily;
18 and

19 (4) the involuntary emergency administration
20 of psychotropic medication;

21 BB. "restraint" means the use of a physical,
22 chemical or mechanical restraint;

23 CC. "seclusion" means the confinement of a child
24 alone in a room from which the child is physically prevented
25 from leaving;

1 DD. "treatment" means provision of behavioral
2 health services based on evaluation of the child, aimed at
3 assisting the child to prevent, correct or ameliorate a mental
4 disorder. The purpose of treatment is to enable the child to
5 attain, maintain or regain maximum functioning;

6 EE. "treatment team" means a team consisting of the
7 child, the child's parents unless parental rights have
8 specifically been limited pursuant to an order of a court,
9 legal custodian, guardian ad litem, treatment guardian,
10 clinician and any other professionals involved in treatment of
11 the child, other members of the child's family, if requested by
12 the child, and the child's attorney if requested by the child,
13 unless in the professional judgment of the treating clinician
14 for reasons of safety or therapy one or more members should be
15 excluded from participation in the treatment team; and

16 FF. "treatment plan" means an individualized plan
17 developed by a treatment team based on assessed strengths and
18 needs of the child and family."

19 SECTION 4. Section 32A-6A-22 NMSA 1978 (being Laws 2007,
20 Chapter 162, Section 22) is amended to read:

21 "32A-6A-22. INVOLUNTARY RESIDENTIAL TREATMENT.--

22 A. A child may not receive treatment for mental
23 disorders or habilitation for developmental disabilities on an
24 involuntary residential basis except as provided in this
25 section.

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1 B. A child afforded rights under the Children's
2 Mental Health and Developmental Disabilities Act shall be
3 advised of those rights at that child's first appearance before
4 the court on a petition under that act.

5 C. A child has the right to be placed in a
6 residential treatment or habilitation program only when the
7 placement is medically necessary.

8 D. A person who believes that a child, as a result
9 of a mental disorder or developmental disability, is in need of
10 residential mental health or developmental disabilities
11 services may request that a children's court attorney file a
12 petition with the court for the child's involuntary placement.
13 The petition shall include a detailed description of the
14 symptoms or behaviors of the child that support the allegations
15 in the petition, a list of prospective witnesses for
16 involuntary placement and a summary of matters to which they
17 will testify. The petition should also contain a discussion of
18 the alternatives to residential care that have been considered
19 and the reasons for rejecting the alternatives. A copy of the
20 petition shall be served upon the child, the child's legal
21 custodian and the child's attorney or guardian ad litem.

22 E. The court shall, upon receiving the petition,
23 appoint counsel for the child unless the child has retained an
24 attorney or an attorney or guardian ad litem has been appointed
25 pursuant to the provisions of the Children's Mental Health and

1 Developmental Disabilities Act. The attorney or guardian ad
2 litem shall represent the child at all stages of the
3 proceedings.

4 F. If, after interviewing the child, the child's
5 attorney or guardian ad litem determines that the child
6 understands the child's rights and desires to waive the child's
7 presence at the hearing on the issue of involuntary placement,
8 the attorney or guardian ad litem shall submit a verified
9 written statement to the court explaining the attorney's or
10 guardian ad litem's understanding of the child's intent. If
11 the court is satisfied that the child has voluntarily and
12 knowingly waived the child's right to be present at the
13 hearing, the child may be involuntarily placed in a residential
14 treatment or habilitation program at a hearing at which the
15 child is not present. By waiving the right to be present at
16 the involuntary placement hearing, the child waives no other
17 rights.

18 G. An involuntary placement hearing shall be held
19 within seven days of the emergency admission of the child to a
20 residential treatment or habilitation program under this
21 section. An involuntary placement hearing shall be held within
22 five days from a child's declaration that the child desires to
23 terminate the child's voluntary admission to a residential
24 treatment or habilitation program if the child's clinician has
25 assessed and documented that involuntary placement is

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1 necessary.

2 H. At the involuntary placement hearing, the child
3 shall:

4 (1) at all times be represented by counsel;

5 (2) have the right to present evidence,
6 including the testimony of a mental health and developmental
7 disabilities professional of the child's own choosing;

8 (3) have the right to cross-examine witnesses;

9 (4) have the right to a complete record of the
10 proceedings; and

11 (5) have the right to an expeditious appeal of
12 an adverse ruling.

13 I. The legal custodian of a child involved in an
14 involuntary placement hearing shall have automatic standing as
15 witnesses and shall be allowed to testify by telephone or
16 through a written affidavit if circumstances make personal
17 testimony too burdensome.

18 J. The court shall include in its findings either a
19 statement of the child's legal custodian's opinion about
20 whether the child should be involuntarily placed in a
21 residential treatment or habilitation program, a statement
22 detailing the efforts made to ascertain the legal custodian's
23 opinion or a statement of why it was not in the child's best
24 interests to have the legal guardian involved.

25 K. The court shall make an order involuntarily

1 placing the child in a residential treatment or habilitation
2 program upon a showing by clear and convincing evidence that:

3 (1) as a result of mental disorder or
4 developmental disability the child needs the treatment or
5 habilitation services proposed;

6 (2) as a result of mental disorder or
7 developmental disability the child is likely to benefit from
8 the treatment or habilitation services proposed or there is
9 evidence that the child poses a likelihood of serious harm to
10 the child's self or to others;

11 (3) the proposed involuntary placement is
12 consistent with the treatment or habilitation needs of the
13 child; and

14 (4) the proposed involuntary placement is
15 consistent with the least restrictive means principle.

16 L. If the court determines that the child does not
17 meet the criteria for involuntary placement set forth in this
18 section, it may order the child to undergo nonresidential
19 treatment or habilitation as may be appropriate and necessary
20 or it may order no treatment. If the court determines that the
21 child should not be involuntarily placed in a residential
22 treatment or habilitation program and if the child's legal
23 custodian refuses to take custody of the child, the court shall
24 refer the case to the department for an abuse and neglect
25 investigation. The department may take the child into custody

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1 pursuant to the provisions of the Abuse and Neglect Act or the
2 Family in Need of Court-Ordered Services Act.

3 M. A child receiving involuntary residential
4 treatment or habilitation services for a mental disorder or
5 developmental disability under this section shall have a right
6 to periodic review of the child's involuntary placement at the
7 end of every involuntary placement period. An involuntary
8 placement period shall not exceed sixty days. At the
9 expiration of an involuntary placement period, the child may
10 continue in residential care only after a new involuntary
11 placement hearing and entry of a new order of involuntary
12 placement for one involuntary placement period. Nothing set
13 forth in the Children's Mental Health and Developmental
14 Disabilities Act prohibits a child, who has been involuntarily
15 placed and thereafter discharged and released, from
16 subsequently voluntarily consenting to admission under the
17 provisions of that act.

18 N. If the person seeking the involuntary placement
19 of a child to a residential treatment or habilitation program
20 believes that the child is likely to cause serious bodily harm
21 to self or to others during the period that would be required
22 to hold an involuntary placement hearing as provided in this
23 section, the child may be admitted to residential care on an
24 emergency basis. If the child is admitted on an emergency
25 basis, appointment of counsel and other procedures shall then

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1 take place as provided elsewhere in this section."

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